IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9270 of 1998

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAYMON GLUES AND CHEMICALS & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR PARESH M DAVE for Petitioner No(s).: 1,2.

MR K.L. PANDYA, AGP, for Respondent No(s).: 1,2.
MR PC MASTER for Respondent No(s).: 3.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 11/07/2005

ORAL JUDGMENT

1. The petitioners herein have challenged the Notification issued under section 10 of the Contract Labour (Regulation and Abolition) Act, 1979 (hereinafter referred to as the said Act) prohibiting the petitioner firm from employing contract labour in its establishment for the works like processes of geletin, glue, engineering, etc.

2. The short facts of the case as emerging from the record are as under:

2.1 The petitioner firm is engaged in the business of manufacture of goods like glue, gelatin, etc. For certain activities like loading and unloading of raw materials and finished goods and engineering, including erection of sheds, the petitioners have been taking help of contract labourers since the work is intermittent in nature. In the year the State Government granted licences to two contractors with effect from1.8.1985 for employing contract labourers, numbering 75 per contractor, in the petitioner unit. Accordingly varying numbers of contract labourers were being employed by the petitioner firm through the said contractors depending upon the requirement of the work.

2.2 In the year 1990 the Kheda Zilla Factor Kamdars Union made a complaint before the State Government for abolition of contract labour system from the petitioner's factory. In pursuance of the same the Board set up under the said Act visited the factory and conducted an inquiry. However, no action was taken on such visit. Therefore, the aforesaid Union filed Special Civil Application No.3468/98 before this Court praying for directions that the report of the Board and its recommendations should be placed before this Court and the State Government be directed to act upon the report by issuing a Notification under section 10 of the Act for abolition of contract labour from the petitioner's

factory. During the pendency of the said petition a Notification under section 10 of the Act came to be issued by the State Government prohibiting employment of contract labourers for any of four activities in the petitioners' factory.

3.0 Mr. Paresh Dave, learned counsel appearing for the petitioners submitted that the notification has been issued without any consultation with the State Board as mandatorily provided under section 10(1) of the said Act. He further submitted that the relevant factors like whether the process, operation or other work was incidental to or necessary for the manufacture that was carried on in the establishment or not, have not been considered before issuing the said notification. He further submitted that though engineering work in the petitioner's factory is only temporary in nature as it only involved erection work on account of expansion of the factory and consequently the petitioners would not require the permanent workers for such work, the impugned notification prohibits employment of contract labour for engineering work also. He submitted that the impugned notification is unreasonable because it was issued only on account of the petition filed by the said Union and not on account of any cogent or relevant reasons. Mr. Dave has also submitted that though there was a report there was a difference of opinion amongst the government and therefore the issue was considered by the Labour Commissioner and after the second report of the Deputy Commissioner they were not heard. Mr. Dave further submitted that in view of the subsequent judgement in the case of Steel Authority of India Ltd. and others Vs. National Union Waterfront Workers and others, reported in (2001)7 SCC 1, the last paragraph of the aforesaid notification will not be applicable to the pending cases.

4.0 Mr. P.C. Master appearing for the respondent no.3 submitted that the employer was heard by the Board and since there was consideration by the

Government, second time consultation is not required as contemplated under section 10 of the said Act.

5.0 Mr. K.L. Pandya, learned the petitioner was asked to abolish the contract labour system, and the petitioner is not given licence to continue the contract labours for the processing work. However, the petitioner has continued the contract labour system and that is why then have challenged the notification. He further submitted that the State authority has taken this decision as per the rules and regulations and after following the proper legal procedure. He, therefore, submitted that no interference is required in the present petition.

6.0 At this stage it would be profitable to look into section 10 of the said Act which reads as under:

> "10. Prohibition of employment of contract labour – (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.
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> (2) Before issuing any notification under sub-section (1) in relation to an establishment the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as:
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> (a) Whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;
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> (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

[c] whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

Explanation: If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final."

7.0 In view of the aforesaid section it is clear that before issuing notification there was consultation and subsequently the Deputy Commissioner has visited the premises and has filed a report. In the affidavit in reply it has been stated that because of the non-cooperation on the part of the petitioner and the contractor the matter was delayed and after careful scrutiny the Government has decided the same in accordance with law. In that view of the matter the contention raised by the petitioner that there was no consultation is required to be rejected.

80 Mr. Dave had next contended that the notification can be applied only from the date of the notification and not prospectively. Mr. Dave has relied upon a decision in the case of Air India Statutory Corporation Vs. United Labour Union, reported in (1997)9 SCC 377.

9.0 However, the aforesaid decision has been considered and and overruled in the case of Steel Authority of India Ltd. Vs. National Union Waterfront Workers, reported in (2001)7 SCC 1. The decision in the case of Steel Authority of India Ltd. has been considered and affirmed by the Apex Court in the case of Nitin Kumar Nathalal Joshi Vs. Oil and Natural Gas Corporation Ltd., reported in AIR 2002 SC 1444.

10.0 In any case, since, even according to the petitioner, the contract system is not available except for loading and unloading workers, the said notification will not affect the petitioner in any manner whatsoever. In view of the above discussion it is found that the notification will apply from the date of the notification i.e. 21st September 1998. Therefore the direction issued in the last paragraph of the Notification i.e. "WHEREAS the judgement of Supreme Court in the case of Air India Statutory Corporation, etc. Vs. United Labour Union & Ors. will be bound to the principal employer in the absorption and regulation of contract labours" is required to be quashed and set aside.

11.0 In the premises aforesaid, the last paragraph of the notification as stated hereinabove is quashed and set aside and it is held that the notification will apply from the date of the notification i.e. 21st September 1998. The rest of the notification is confirmed. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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